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DEPARTMENT OF EDUCATION

34 CFR Chapter II

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[Docket ID ED-2018-OII-0062]

Proposed priorities, requirements, definitions, and selection criteria--Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes priorities, requirements, definitions, and selection criteria for Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer grants) under the Expanding Opportunity Through Quality Charter Schools Program (CSP), Catalog of Federal Domestic Assistance (CFDA) numbers 84.282B and 84.282E, respectively. We may use one or more

of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2019 and later years. We take this action to support the opening of new charter schools (CFDA 84.282B) and the replication and expansion of high-quality charter schools (CFDA 84.282E) throughout the Nation, particularly those that serve educationally disadvantaged students, such as students who are individuals from low-income families, and students who traditionally have been underserved by charter schools, such as Native American students and students in rural communities.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including

instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery:

If you mail or deliver your comments, address them to Katherine Cox, U.S. Department of Education, 400 Maryland Avenue, SW, room 3E207, Washington, DC 20202-5970.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Katherine Cox, U.S. Department of Education, 400 Maryland Avenue, SW, room 3E207, Washington, DC 20202-5970. Telephone: (202) 453-6886. Email: [charterschools@ed.gov](mailto:charterschools@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, definitions, and selection criteria. To ensure that your

comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the proposed priority, requirement, definition, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of this program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, definitions, and selection criteria by accessing [Regulations.gov](https://www.regulations.gov). You may also inspect the comments in person at 400 Maryland Avenue, SW, room 3E207, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual

with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities, requirements, definitions, and selection criteria. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The major purposes of the CSP are to expand opportunities for all students, particularly traditionally underserved students, to attend charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of public charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; encourage States to provide facilities support to charter schools; and support efforts to strengthen the charter school authorizing process.

Developer grants are intended to support charter schools that serve early childhood, elementary school, or secondary school students by providing grant funds to

eligible applicants for the opening of new charter schools (CFDA number 84.282B) and for the replication and expansion of high-quality charter schools (CFDA number 84.282E).

Program Authority: Title IV, part C of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7221-7221j).

PROPOSED PRIORITIES:

This document contains seven proposed priorities.

Proposed Priority 1--Spurring Investment in Opportunity Zones.

Background: Created under the Tax Cuts and Jobs Act (Pub. L. 115-97), opportunity zones are intended to promote economic development and job creation in distressed communities through preferential tax treatment for investors. Specifically, if an individual invests capital gains in an opportunity fund--i.e., a vehicle established for the purpose of investing in property in an opportunity zone--the taxes the individual owes on those gains can be deferred and reduced.

Through this proposed priority, the Administration seeks to harness the power of opportunity zones to help increase the educational choices available to students in these communities. The Department would use this priority to encourage the opening of new charter schools and the

replication and expansion of high-quality charter schools in opportunity zones and to reward charter school developers that are partnering with an opportunity fund, especially for the purpose of acquiring or constructing school facilities.

The Department would have flexibility to use either the priority's first area only or both of the priority's areas in a given competition and, with respect to the second area, may give applicants additional time prior to making an award to provide evidence of receipt of financial assistance from an opportunity fund. The Department recognizes that such additional time may be needed to enable an applicant to formalize a relationship with an opportunity fund. We anticipate, however, that we would provide additional time for this purpose only if the priority area is used in an absolute priority.

Proposed Priority: Under this priority, an applicant must address one or both of the following priority areas--

(a) Propose to open a new charter school or to replicate or expand a high-quality charter school in a qualified opportunity zone as designated by the Secretary of the Treasury under section 1400Z-1 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act (Pub. L. 115-97); and

(b) Provide evidence in its application that it has received or will receive financial assistance from a qualified opportunity fund under section 1400Z-2 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act, for one or more of the following, as needed to open or to replicate or expand the school:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of the school) in improved or unimproved real property;

(2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities;

(3) The predevelopment costs required to assess sites for purposes of subparagraph (1) or (2); and

(4) The acquisition of other tangible property.

In addressing paragraph (a) of this priority, an applicant must provide the census tract number of the qualified opportunity zone in which it proposes to open a new charter school or replicate or expand a high-quality charter school. A list of qualified opportunity zones, with census tract numbers, is available at [www.cdfifund.gov/Pages/Opportunity-Zones.aspx](http://www.cdfifund.gov/Pages/Opportunity-Zones.aspx).

In addressing paragraph (b) of this priority, an applicant must identify the qualified opportunity fund from



which it has received or will receive financial assistance. The Department may, at its discretion, give applicants additional time to provide evidence of such assistance after the deadline for transmittal of applications. If the Department elects to give applicants additional time, we will announce in the notice inviting applications (NIA) the deadline by which such evidence must be provided.

Proposed Priority 2--Reopening Academically Poor-performing Public Schools as Charter Schools.

Background: The CSP authorizing statute includes a priority under the CMO grant competition for eligible entities that demonstrate success in working with schools identified by the State for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the ESEA. In 2018, the Department undertook rulemaking to develop a final priority under the CMO grant competition that is based on that grant competition's statutory priority but would require that, in order to meet the priority, the applicant also would be required to use grant funds to support school improvement efforts by restarting an academically poor-performing public school. The priority included in this competition is almost identical to the final priority under the CMO grant competition.

We believe that the restart model (i.e., reopening a

low-performing traditional public school under the management of a charter school developer, or reopening a low-performing public charter school under the management of a different charter school developer) holds promise as a school improvement strategy, but data suggest that it has been underutilized.<sup>1</sup> Accordingly, the proposed priority is intended to help increase the frequency of implementation of the restart model. Like the CMO grant competition's final priority, the proposed priority also would require applicants to demonstrate past success through work with one or more academically poor-performing schools or schools previously designated as persistently lowest-achieving schools or priority schools (i.e., schools identified for interventions under the former School Improvement Grant program or in States that exercised "ESEA flexibility," respectively, under the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB)), including but not limited to direct experience reopening academically poor-performing public schools as charter schools.

In future Developer grant competitions that include this priority, we would encourage applicants to review CSP

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<sup>1</sup> Hurlburt, S., Therriault, S.B., and Le Floch, K.C. (2012). School Improvement Grants: Analyses of State Applications and Eligible and Awarded Schools (NCEE 2012-4060). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

technical assistance materials pertaining to how an applicant may design an admissions lottery for an academically poor-performing public school that the applicant is proposing to restart. Under the most recent version of the CSP nonregulatory guidance, for example, a charter school receiving CSP funds could, if permissible under applicable State law, exempt from its lottery students who are enrolled in the academically poor-performing public school at the time it is restarted.

Proposed Priority: Under this priority, applicants must--

(a) Demonstrate past success working with one or more academically poor-performing public schools or schools that previously were designated as persistently lowest-achieving schools or priority schools under the former School Improvement Grant program or in States that exercised ESEA flexibility, respectively, under the ESEA, as amended by NCLB, including but not limited to direct experience reopening academically poor-performing public schools as charter schools; and

(b) Propose to use grant funds under this program to reopen an academically poor-performing public school as a charter school during the project period by--

(1) Replicating a high-quality charter school based on a successful charter school model for which the

applicant has provided evidence of success; and

(2) Targeting a demographically similar student population in the replicated charter school as was served by the academically poor-performing public school, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

Proposed Priority 3--High School Students.

Background: The CSP authorizing statute includes a priority under the CMO grant competition for eligible applicants that propose to expand or replicate high-quality charter schools that serve high school students. In addition, section 4310(2)(M) of the ESEA authorizes charter schools that serve postsecondary students to receive CSP funds. In 2018, the Department went through the rulemaking process to develop a final priority for the CMO grant competition based on that competition's statutory priority. The priority expanded upon that priority by also requiring that applicants replicate or expand charter high schools that offer programs and activities designed to prepare high school students for enrollment in postsecondary education institutions, which include those that offer one-year training programs that prepare students for gainful employment in a recognized occupation (as described in section 101(b)(1) of the Higher Education Act of 1965, as

amended (HEA)) and support such students after high school graduation in persisting in college and attaining degrees and certificates.

The proposed priority included in this notice is almost identical to the CMO grant competition priority, as the Department believes the priority would complement broader efforts to increase postsecondary participation, attendance, persistence, and degree attainment among our Nation's high school graduates. In order to meet the priority, an applicant must describe how it will prepare students for postsecondary education and, drawing from the authority provided in section 4310(2)(M) of the ESEA, provide support for its graduates who enroll in institutions of higher education and certain one-year training programs that prepare students for gainful employment in a recognized occupation. In addition, applicants must establish one or more project-specific performance measures that will provide reliable information about the grantee's progress in meeting the objectives of the project.

Proposed Priority: (a) Under this priority, applicants must propose to--

(1) Open a new charter school or replicate or expand a high-quality charter school to serve high school

students, including educationally disadvantaged students;

(2) Prepare students, including educationally disadvantaged students, in that school for enrollment in postsecondary education institutions through activities such as, but not limited to, accelerated learning programs (including Advanced Placement and International Baccalaureate courses and programs, dual or concurrent enrollment programs, and early college high schools), college counseling, career and technical education programs, career counseling, internships, work-based learning programs (such as apprenticeships), assisting students in the college admissions and financial aid application processes, and preparing students to take standardized college admissions tests; and

(3) Provide support for students, including educationally disadvantaged students, who graduate from that school and enroll in postsecondary education institutions in persisting in, and attaining a degree or certificate from, such institutions, through activities such as, but not limited to, mentorships, ongoing assistance with the financial aid application process, and establishing or strengthening peer support systems for such students attending the same institution.

(b) Applicants must propose one or more project-

specific performance measures, including aligned leading indicators or other interim milestones, that will provide valid and reliable information about the applicant's progress in preparing students, including educationally disadvantaged students, for enrollment in postsecondary education institutions and in supporting those students in persisting in and attaining a degree or certificate from such institutions. An applicant addressing this priority and receiving a Developer grant must provide data that are responsive to the measure(s), including performance targets, in its annual performance reports to the Department.

(c) For purposes of this priority, postsecondary education institutions include institutions of higher education, as defined in section 8101(29) of the ESEA, and one-year training programs that meet the requirements of section 101(b)(1) of the HEA.

Proposed Priority 4--Rural Community.

Background: We propose this priority to enable the Department to provide incentives for applicants to propose to open a new charter school or to replicate or expand a high-quality charter school in a rural community. There is too often a relative dearth of high-quality educational options for students in rural communities, and our

experience implementing this and other discretionary grant programs has taught us that students in these communities often face unique obstacles to educational success. This proposed priority would allow the Department flexibility to provide an incentive for applicants proposing to open a new charter school or to replicate or expand a high-quality charter school in a rural community, including by evaluating such applications separately from applications proposing to open new charter schools or to replicate or expand high-quality charter schools in non-rural communities, thereby allowing for an “apples-to-apples” comparison.

To meet this priority, an applicant would need to propose to open a new charter school or to replicate or expand a high-quality charter school in a rural community or such a school in a non-rural community, depending on the Department’s policy objectives in a given year and which prong of the priority the applicant is addressing.

This proposed priority would help ensure that students in rural communities have access to a range of educational options similar to that available to their peers in suburban and urban areas, and from which parents can select an option that best meets their child’s needs.

Proposed Priority: Under this priority, applicants must



propose to open a new charter school or to replicate or expand a high-quality charter school in--

(a) A rural community; or

(b) A community that is not a rural community.

Proposed Priority 5--Opening a New Charter School or Replicating or Expanding a High-quality Charter School to Serve Native American Students.

Background: We propose this priority to enable the Department to provide an incentive for applicants that propose to open a new charter school or to replicate or expand a high-quality charter school by conducting targeted outreach and recruitment in order to serve a high proportion of Native American students. We propose to define "high proportion" in a way that would enable the Department to determine whether a new, replicated, or expanded charter school serves a high proportion of Native American students on a case-by-case basis, taking into consideration the unique factual circumstances of that school. The priority would allow applicants to receive priority for proposing to open a new charter school, or to replicate or expand a high-quality charter school, that serves Native Hawaiian and Native American Pacific Islander students, as well as students who are Indians (including Alaska Natives).

In order to meet the priority, an applicant would be required to provide a letter of support from one or more Indian Tribes or Native American organizations located within the area to be served by the new, replicated, or expanded charter school, and to meaningfully collaborate with the Indian Tribes or Native American organizations in a timely, active, and ongoing manner. In addition, the applicant would have to demonstrate that the new, replicated, or expanded charter school's mission and educational program will address the unique educational needs of students who are Native Americans, and that such school's governing board will have a substantial percentage of members who are members of Indian Tribes or Native American organizations located within the area to be served by the charter school. Generally, a school board with a percentage of members of Indian Tribes or Native American organizations that is comparable to the percentage of Native American students to be served would satisfy the substantial percentage requirement in this priority; however, there may be circumstances where a smaller or larger percentage of members from an Indian Tribe or Native American organization is appropriate.

Proposed Priority:

Under this priority, applicants must--

(a) Propose to open a new charter school, or replicate or expand a high-quality charter school, that--

(1) Utilizes targeted outreach and recruitment in order to serve a high proportion of Native American students, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws;

(2) Has a mission and focus that will address the unique educational needs of Native American students, such as through the use of instructional programs and teaching methods that reflect and preserve Native American language, culture, and history; and

(3) Has or will have a governing board with a substantial percentage of members who are members of Indian Tribes or Native American organizations located within the area to be served by the new, replicated, or expanded charter school;

(b) Submit a letter of support from at least one Indian Tribe or Native American organization located within the area to be served by the new, replicated, or expanded charter school; and

(c) Meaningfully collaborate with the Indian Tribe(s) or Native American organization(s) from which the applicant has received a letter of support in a timely, active, and

ongoing manner with respect to the development and implementation of the educational program at the charter school.

Proposed Priority 6--Low-Income Demographic.

Background: This proposed priority is for applicants with experience serving concentrations of students who are individuals from low-income families and is intended to support efforts to increase the number of high-quality educational options available to such students, particularly in the Nation's high-poverty areas. We propose three subparts to this proposed priority, each of which would require that the schools the applicant operates or manages serve a specific minimum percentage of students who are individuals from low-income families over the course of the Developer grant project period. The Secretary would have flexibility to choose one or more of the subparts of this priority in a given competition. We believe such flexibility is necessary to enable the Secretary to accommodate the range of eligible applicants and schools that may need support in a given year.

Under the proposed priority, a charter school proposed to be opened, replicated, or expanded by an applicant would serve, for the duration of the grant period, a percentage of students who are individuals from low-income families

that is comparable to the minimum percentage of such students established under the priority for a given year. While the priority is written in a manner that gives the Department flexibility to apply one, two, or all three poverty standards in a single competition, we do not anticipate applying more than one poverty standard in a single competition.

Proposed Priority:

Under this priority, applicants must demonstrate one of the following--

(a) That at least 40 percent of the students across all of the charter schools the applicant operates or manages are individuals from low-income families, and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period;

(b) That at least 50 percent of the students across all of the charter schools the applicant operates or manages are individuals from low-income families, and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period; or

(c) That at least 60 percent of the students across all of the charter schools the applicant operates or

manages are individuals from low-income families, and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period.

Proposed Priority 7--Single School Operators.

Background: Under this priority, we would give preference to applicants that currently operate a single charter school. We are including this priority to encourage applications from developers that currently operate a single charter school but seek to replicate or expand it. Through this priority, we hope to support successful single school operators to grow into charter management organizations that, in the future, can continue to replicate and expand their successful school models. This proposed priority also would allow the Department to evaluate applicants from single school operators separately from applicants that already operate more than one school, thereby allowing for an "apples-to-apples" comparison.

Proposed Priority: Under this priority, applicants must provide evidence that--

- (a) The applicant currently operates one, and only one, charter school; or
- (b) The applicant currently operates more than one charter school.

### Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c) (3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c) (2) (i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c) (2) (ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c) (1)).

### PROPOSED REQUIREMENTS:

Background: Section 4305(a) (2) of the ESEA includes specific requirements applicable to the Developer grant

competition. In addition to those requirements, section 4305(c) of the ESEA requires grants awarded to Developers to have the "same terms and conditions as grants awarded to State entities under section 4303." As applicable, we intend to apply the requirements in section 4303(f) of the ESEA to Developer grants, in addition to the proposed application requirements, eligibility restrictions, and funding restrictions.

In general, the Department believes, based on past experience administering this program, that these proposed requirements are necessary for the proper consideration of applications for Developer grants and would increase the likelihood of success of applicants' proposed projects, thereby contributing to the efficient use of taxpayer dollars in expanding the high-quality educational options available to our Nation's students. In accordance with section 4305(c), these proposed requirements would not preclude the Department from applying other terms and conditions applicable to State entity grants to Developer grants in FY 2019 or future years.

Proposed Requirements: We propose the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.



Applicants for funds under this program must address one or more of the following application requirements:

(a) Describe the applicant's objectives in running a quality charter school program and how the program will be carried out.

(b) Describe the educational program that the applicant will implement in the charter school receiving funding under this program, including—

(1) Information on how the program will enable all students to meet the challenging State academic standards;

(2) The grade levels or ages of students who will be served; and

(3) The instructional practices that will be used.

(c) Describe how the applicant will ensure that the charter school that will receive funds will recruit, enroll, and retain students, including educationally disadvantaged students, which include children with disabilities and English learners, including the lottery and enrollment procedures that will be used for the charter school if more students apply for admission than can be accommodated, and, if the applicant proposes to use a weighted lottery, how the weighted lottery complies with section 4303(c) (3) (A) of the ESEA.

(d) Provide a complete logic model (as defined in 34 CFR 77.1) for the grant project. The logic model must include the applicant's objectives for implementing a new charter school or replicating or expanding a high-quality charter school with funding under this competition.

(e) Provide a budget narrative, aligned with the activities, target grant project outputs, and outcomes described in the logic model, that outlines how grant funds will be expended to carry out planned activities.

(f) If the applicant proposes to open a new charter school (CFDA number 84.282B) or proposes to replicate or expand a charter school (CFDA number 84.282E) that provides a single-sex educational program, demonstrate that the proposed single-sex educational programs are in compliance with title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) ("Title IX") and its implementing regulations, including 34 CFR 106.34.

(g) Provide the applicant's most recent available independently audited financial statements prepared in accordance with generally accepted accounting principles.

(h) For each charter school currently operated or managed by applicants under CFDA 84.282E for replication and expansion, provide—

(1) Information that demonstrates that the school is treated as a separate school by its authorized public chartering agency and the State, including for purposes of accountability and reporting under title I, part A of the ESEA;

(2) Student assessment results for all students and for each subgroup of students described in section 1111(c)(2) of the ESEA;

(3) Attendance and student retention rates for the most recently completed school year and, if applicable, the most recent available four-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates; and

(4) Information on any significant compliance and management issues encountered within the last three school years by the existing charter school being operated or managed by the eligible entity, including in the areas of student safety and finance.

(i) Provide--

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the eligible entity believes are necessary for the successful operation of the charter school to be opened or to be replicated or expanded; and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived or otherwise not apply to the school that will receive funds.

(j) A description of how each school that will receive funds meets the definition of charter school under section 4310(2) of the ESEA.

Eligibility: Eligibility for a grant under this competition is limited to charter school developers in States that do not currently have a CSP State Entity grant (CFDA number 84.282A) under the ESEA. Eligibility in a State with a CSP State Educational Agency (SEA) grant (CFDA 84.282A) under the ESEA, as amended by NCLB, is limited to grants for replication and expansion<sup>2</sup> (CFDA 84.282E) and only if the Department has not approved an amendment to the SEA's approved grant application authorizing the SEA to make subgrants for replication and expansion.<sup>3</sup>

Funding Restriction: An applicant may only propose to support one charter school per grant application.

#### PROPOSED DEFINITIONS:

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<sup>2</sup> The list of eligible States will be included in the NIA for this competition and will be updated at the time of publication of that notice.

<sup>3</sup> The list of these States will be included in the NIA for this competition and will be updated at the time of publication of that notice.

We propose the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Background: In order to ensure a common understanding of the proposed priorities, requirements, and selection criteria, we propose definitions that are critical to the policy and statutory purposes of the Developer grant program. We propose these definitions in order to clarify expectations for eligible entities applying for Developer grants and to ensure that the review process for applications for Developer grants remains as transparent as possible. The proposed definition for educationally disadvantaged students is based on section 1115(c) (2) of the ESEA, and the proposed definition for Indian Tribe is from section 6132(b) (2) of the ESEA. In addition, we are particularly interested in receiving feedback on the proposed definition of rural community.

Academically poor-performing public school means:

- (a) A school identified by the State for comprehensive support and improvement under section 1111(c) (4) (D) (i) of the ESEA; or
- (b) A public school otherwise identified by the State or, in the case of a charter school, its authorized public

chartering agency, as similarly academically poor-performing.

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care.

High proportion, when used to refer to Native American students, means a fact-specific, case-by-case determination based upon the unique circumstances of a particular charter school or proposed charter school. The Secretary considers "high proportion" to include a majority of Native American students. In addition, the Secretary may determine that less than a majority of Native American students constitutes a "high proportion" based on the unique circumstances of a particular charter school or proposed charter school, as described in the application for funds.

Indian Tribe means a federally recognized or a State-recognized Tribe.

Individual from a low-income family means an individual who is determined by a State educational agency

or local educational agency to be a child from a low-income family on the basis of (a) data used by the Secretary to determine allocations under section 1124 of the ESEA, (b) data on children eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act, (c) data on children in families receiving assistance under part A of title IV of the Social Security Act, (d) data on children eligible to receive medical assistance under the Medicaid program under title XIX of the Social Security Act, or (e) an alternate method that combines or extrapolates from the data in items (a) through (d) of this definition.

Institution of higher education means an educational institution in any State that—

(a) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 484(d) of the HEA;

(b) Is legally authorized within such State to provide a program of education beyond secondary education;

(c) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit

toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(d) Is a public or other nonprofit institution; and

(e) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Native American means an Indian (including an Alaska Native), as defined in section 6132(b)(2) of the ESEA, Native Hawaiian, or Native American Pacific Islander.

Native American language means the historical, traditional languages spoken by Native Americans.

Native American organization means an organization that—

(a) Is legally established—

(1) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and



(2) With appropriate constitution, by-laws, or articles of incorporation;

(b) Includes in its purposes the promotion of the education of Native Americans;

(c) Is controlled by a governing board, the majority of which is Native American;

(d) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(e) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(f) Is not an agency of State or local government.

Rural community means a community that is served by a local educational agency that is eligible to apply for funds under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the ESEA. Applicants may determine whether a particular local educational agency is eligible for these programs by referring to information on the following Department websites. For the SRSA program: [www2.ed.gov/programs/reapsrsa/eligible16/index.html](http://www2.ed.gov/programs/reapsrsa/eligible16/index.html). For the RLIS program: [www2.ed.gov/programs/reaprlisp/eligibility.html](http://www2.ed.gov/programs/reaprlisp/eligibility.html).

PROPOSED SELECTION CRITERIA:

Background: Based on past experience implementing the Developer grant competition and its predecessor competition, we believe that these additional criteria will be valuable tools for peer reviewers to evaluate the quality of Developer applications in future years.

Proposed selection criterion (a) "Quality of the eligible applicant" would only apply to applicants under CFDA number 84.282E for replication and expansion. Under this proposed selection criterion, the Department would consider the degree to which an applicant has demonstrated success in increasing student academic achievement, the degree to which the academic achievement results for educationally disadvantaged students served by the charter schools operated or managed by the applicant have exceeded the average academic achievement results for such students in the State, whether charter schools operated or managed by the applicant have been closed or have encountered statutory or regulatory compliance issues, and the strength of the applicant's non-academic results such as parent satisfaction, school climate, student mental health, civic engagement, and crime prevention and reduction. Further, we propose to incorporate into this criterion language from the ESEA definition of "high-quality charter school" that

would enable reviewers also to consider any significant issues that an applicant's charter schools have encountered in the areas of financial or operational management and student safety. The Department believes that these proposed selection factors would align with the intent of the authorizing statute and would bolster our ability to select high-quality Developer applicants that propose to replicate or expand a high-quality charter school.

Proposed selection criterion (b) "Significance of contribution in assisting educationally disadvantaged students" would focus on the contribution the proposed project would make in expanding educational opportunities for educationally disadvantaged students and enabling those students to meet challenging State academic standards. This proposed criterion would allow the Department to assess the extent to which each proposed project aligns with a major statutory purpose of the CSP: to expand opportunities for educationally disadvantaged students. This criterion would encourage applicants to discuss their plans for opening a new charter school, or replicating or expanding a high-quality charter school, that will recruit and enroll educationally disadvantaged students.

Proposed selection criterion (c) "Quality of the continuation plan" would focus on the applicant's plan for

continuing to operate the charter school that would receive grant funds once those funds are no longer available. This criterion will enable reviewers to assess the strength of applicants' continuation plans and the extent to which the applicant is prepared to operate the charter school in a way that is consistent with the eligible applicant's application even after the grant performance period ends.

Proposed Selection Criteria: We propose the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. In the NIA, we will announce the maximum possible points assigned to each criterion.

The Secretary will select eligible entities to receive grants under this program on the basis of the quality of such applications, after taking into consideration one or more of the following selection criteria:

(a) Quality of the eligible applicant.

In determining the quality of the eligible applicant, the Secretary considers the following factors:

(1) The extent to which the academic achievement results (including annual student performance on statewide assessments and annual student attendance and retention rates and, where applicable and available, student academic

growth, high school graduation rates, postsecondary enrollment and persistence rates, including in college or career training programs, employment rates, earnings, and other academic outcomes) for educationally disadvantaged students served by the charter school(s) operated or managed by the applicant have exceeded the average academic achievement results for such students served by other public schools in the State.

(2) The extent to which one or more charter schools operated or managed by the applicant have closed; have had a charter revoked due to noncompliance with statutory or regulatory requirements; or have had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation.

(3) The extent to which one or more charter schools operated or managed by the applicant have had any significant issues in the area of financial or operational management or student safety, or have otherwise experienced significant problems with statutory or regulatory compliance that could lead to revocation of the school's charter.

(4) The extent to which the schools operated or managed by the applicant demonstrate strong results on measurable outcomes in non-academic areas such as, but not

limited to, parent satisfaction, school climate, student mental health, civic engagement, and crime prevention and reduction.

(b) Significance of contribution in assisting educationally disadvantaged students.

In determining the significance of the contribution the proposed project will make in expanding educational opportunity for educationally disadvantaged students and enabling those students to meet challenging State academic standards, the Secretary considers the quality of the plan to ensure that the charter school the applicant proposes to open, replicate, or expand will recruit, enroll, and effectively serve educationally disadvantaged students, which include children with disabilities and English learners.

(c) Quality of the continuation plan.

In determining the quality of the continuation plan, the Secretary considers the extent to which the eligible applicant is prepared to continue to operate the charter school that would receive grant funds in a manner consistent with the eligible applicant's application once the grant funds under this program are no longer available. Final Priorities, Requirements, Definitions, and Selection Criteria:

We will announce the final priorities, requirements, definitions, and selection criteria in a document in the *Federal Register*. We will determine the final priorities, requirements, definitions, and selection criteria after considering public comments and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866, 13563, and 13771

#### Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

- (1) Have an annual effect on the economy of \$100

million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of



existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of

compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal

governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We believe that the benefits of this regulatory action outweigh any associated costs, which we believe would be minimal. While this action would impose cost-bearing requirements on participating Developers, we expect that Developer applicants would include requests for funds to cover such costs in their proposed project budgets. We believe this regulatory action would strengthen accountability for the use of Federal funds by helping to ensure that the Department awards CSP grants to Developers that are most capable of expanding the number of high-quality charter schools available to our Nation's students.

#### Paperwork Reduction Act of 1995

The proposed priorities, requirements, and selection criteria contain information collection requirements that are approved by OMB under OMB control number 1894-0006; the

proposed priorities, requirements, and selection criteria do not affect the currently approved data collection.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Participation in this program is voluntary and limited to charter school developers seeking funds to help open a new charter school or replicate or expand a high-quality charter. The Department anticipates that approximately 50 developers will apply for Developer grants in a given year and estimates that approximately half of these developers will be small entities. For this limited number of small entities, any cost-bearing requirements imposed by this regulatory action can be defrayed with grant funds, as

discussed in the Regulatory Impact Analysis.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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Dated: April 1, 2019.

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Frank T. Brogan,  
*Assistant Secretary for Elementary  
and Secondary Education.*

